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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TIM MAY,

Plaintiff and Appellant,

v.

GARY HALLENBECK,

Defendant and Respondent.

G052416

(Super. Ct. No. 30-2014-00714841)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila Fell, Judge. Affirmed.

Tim May, in pro. per., for Plaintiff and Appellant.

Law Offices of Anthony G. Lagomarsino and Anthony G. Lagomarsino for Defendant and Respondent.

INTRODUCTION

Appellant Tim May has gone so far as to return from the dead to sue respondent Gary Hallenbeck for assault and homicide. Unfortunately for May, the alleged incidents occurred in the 1970's and 1980's. The most recent event, the one causing May's death, occurred in 1992.

Hallenbeck demurred to the first amended complaint on statute of limitations grounds, and the trial court sustained the demurrer without leave to amend. We affirm. The limitations period for assault, battery, and wrongful death had clearly expired by the time May filed his complaint in April 2014, and May has not suggested how he could amend to avoid this defense.

FACTS

Representing himself, May filed a complaint against Hallenbeck on April 8, 2014, alleging three incidents of assault and battery. During the first one, occurring in "the late 1970's," Hallenbeck allegedly tried to strangle May. During the second one, occurring in "the late 1980's," Hallenbeck "tried to kill . . . May by breaking his neck." The last incident, occurring in 1992, resulted in May's death "for some time" from a stab wound. May alleged counts for assault, assault and battery, and aggravated assault based on these three incidents.

Hallenbeck demurred to the complaint, but before the demurrer was heard, May filed the first amended complaint, on February 17, 2015. The factual allegations of the first amended complaint were identical to those of the original complaint, including the allegation that Hallenbeck had killed May in 1992.

Hallenbeck demurred again, and this time the demurrer was sustained without leave to amend.¹ The judgment of dismissal was entered on August 4, 2015.

DISCUSSION

“In reviewing a judgment of dismissal after a demurrer is sustained without leave to amend, we must assume the truth of all facts properly pleaded by the plaintiff-appellant. Regardless of the label attached to the cause of action, we must examine a complaint’s factual allegations to determine whether they state a cause of action on any available legal theory. . . . [¶] We will not, however, assume the truth of contentions, deductions, or conclusions of fact or law and may disregard allegations that are contrary to the law or to a fact which may be judicially noticed.” (*Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1554-1555.) We affirm a judgment based on the sustaining of a demurrer on any properly supported ground, regardless of the trial court’s reasons. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 111; see *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19.)

A demurrer may be sustained on the ground that the causes of action are time-barred if the bar clearly appears on the face of the complaint. (*Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal.App.4th 953, 960.) The limitations period at the time the cause of action accrued is the relevant period. (*Id.* at p. 962.)

We review the refusal of the trial court to permit amendment after the sustaining of a demurrer for abuse of discretion. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 110.) The appellant must explain what the proposed amendments are and how they would cure the initial pleading deficiencies. (*Ibid.*)

¹ The minute order stated two grounds for the ruling. First, the claims were barred by the statute of limitations. Second, the complaint was identical to one filed in 2013, and was therefore barred by res judicata. The record does not contain any documents relating to the 2013 lawsuit. The minute order also referred to tolling for delayed discovery. There are no allegations of delayed discovery in the first amended complaint.

Between 1872 and 2002, the limitations period for actions for injury from assault or battery was one year. In 1905, wrongful death was added to the one-year statute. (See former Code Civ. Proc., § 340.) Code of Civil Procedure section 335.1, enacted in 2002, increased the limitations period for assault, battery, and wrongful death to two years.

A cause of action for assault, battery, and wrongful death accrues when the harm is inflicted. (*Sonbergh v. MacQuarrie* (1952) 112 Cal.App.2d 771, 773.) Clearly causes of action for an assault and a battery that allegedly took place 30 and 40 years ago are time-barred. A cause of action for wrongful death that accrued in 1992, even assuming it could be brought by the victim himself, is also barred.

May's opening brief, so far as we can tell, does not address the limitations period at all. Moreover, the brief violates nearly every rule in the California Rules of Court regarding the form and substance of appellate briefs.² Appellant says he's been through some hard times of late, but a party, even an unrepresented party, who fails to identify an issue and properly support it with arguments and citations is deemed to have waived the issue. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) As May's opening brief does not address the only relevant issue in the appeal – the limitations period – we deem any argument he may have had concerning it waived.

DISPOSITION

The judgment of dismissal is affirmed. Respondent is entitled to his costs on appeal.

²

May did not file a reply brief.

BEDSWORTH, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.